



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,583	04/15/2004	Joachim Schmidt	2133.034USU	8182

7590 11/02/2010
Charles N. J. Ruggiero, Esq.
Ohlandt, Greeley, Ruggiero & Perle, LLP
10th Floor
One Landmark Square
Stamford, CT 06901-2682

EXAMINER

LAFORGIA, CHRISTIAN A

ART UNIT	PAPER NUMBER
----------	--------------

2439

MAIL DATE	DELIVERY MODE
-----------	---------------

11/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/825,583</p>	<p>Applicant(s) SCHMIDT, JOACHIM</p>	
	<p>Examiner Christian LaForgia</p>	<p>Art Unit 2439</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 October 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-20 and 23-27.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Christian LaForgia/
Primary Examiner, Art Unit 2439

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments with respect to the rejections made under 35 U.S.C. § 101, filed 27 October 2010 have been fully considered but they are not persuasive. The Applicant argues that claims 24-27 are not directed to laws of nature, physical phenomena, or abstract ideas and are therefore eligible for patent protection under 35 U.S.C. § 101. The Supreme Court announced the "machine-or-transformation" test this past summer for determining the patent eligibility of processes, that in their broadest interpretation could be performed mentally, verbally, or without a machine. In *Re Bilski*, 545 F.3d 943, 954 (Fed. Cir. 2008), *aff'd* 561 U.S. ____ (2010). The Northern and Central District Courts of California have held that the Internet is not a machine, it is an abstraction. *Ultramercial, LLC v. Hulu, LLC.*, Case No. CV 09-06918, slip op. at 10-11 (C.D. Cal. 2010) (citing to *CyberSource Corp. V. Retail Decision, Inc.*, 620 F. Supp. 2d 1068, 1077-78 (N.D. Cal. 2009)). Applicant's amendments to include "via the at least one transmission system" do not tie the claimed invention to a machine since the Internet has been determined to be an abstraction. Nor do the claims transfer matter to a different state. Therefore, the 35 U.S.C. § 101 rejection of claims 24-27 is maintained.

The applicant argues that the prior art does not teach transmitting security-relevant data in the first data packet and redundant information in the second data packet. The Examiner disagrees. The examiner has pointed out in the previous office action that the prior art reference discloses the transmission of protected video in a first packet at at least paragraphs 0017 and 0035. The Examiner has also shown that redundant information, namely forward error correction information, is transferred in a second, separate packet at at least paragraphs 0016 and 0017. Therefore the prior art discloses transmitting security-relevant data in the first data packet and redundant information in the second data packet, and the prior art rejection is maintained..